IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 5010 of 2004(S)

OA.401/2000 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
.....

PETITIONER: -

JACOB CHANDY, AGED 68 YEARS,
S/O.LATE VIDWAN V.C.CHANDY (RETIRED MANAGER - ADMINISTRATION, COCHIN SHIPYARD LIMITED)
RESIDING AT "2542-A , A.K.G.VAYANASALA ROAD,
THAMMANAM.P.O., KOCHI-682032.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU

RESPONDENTS:-
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1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO MINISTRY OF SHIPPING,
PARIVAHAN BHAVAN, PARLIAMENT STREET,
NEW DELHI - 1.

2. THE COCHIN SHIPYARD LIMITED,
THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR,
COCHIN SHIPYARD LIMITED, KOCHI-15.

R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R2 BY SRI.M.PATHROSE MATHAI, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5010 of 2004(S).

PETITIONER'S EXHIBITS:-

Ext.P1: Copy of the order in OA.NO.401/2000 dtd.28.5.2000.

Ext.P2: Copy of the order in RA.4/4/2003.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.5010 of 2004-S

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Dated this the 9th day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioner was the applicant in O.A. No.401/2000 before the Central Administrative Tribunal, Ernakulam Bench. He was a servant under the Union of India since 9.3.1959. Later, he was transferred to Cochin Shipyard Limited on 8.6.1961 which was at the relevant time, a departmental undertaking. Later, Cochin Shipyard Limited was established as a Government of India company in 1972. The services of the petitioner and others were absorbed in the company subject to the same terms and conditions they enjoyed under the Government of India. Under the Central Government, he had 13 years and 23 days of pensionable service as on 1.4.1972 when his services were taken over by the second respondent. But when he retired from the Cochin Shipyard Limited in 1994, his service under the Shipyard alone was reckoned for the purpose of grant of terminal benefits. Feeling aggrieved by the same, the petitioner filed a representation in 1999 which was rejected. Thereupon, the present O.A. was filed. The O.A. was finally allowed by Ext.P1 judgment issuing the following

directions:

> "(a) We declare that the applicant is entitled to be granted monthly pension as provided under the CCS (Pension) Rules 1972 for the service rendered under the first respondent subject to the condition that he remits the proportionate retiral benefits received by him from the second respondent for his Government service within one month from the date of receipt of the intimation of the value of the proportionate retiral benefits, under advice to both the respondents.
>
> (a) As soon as the applicant remits the proportionate retiral benefits and advises the same as in (a) above, first respondent shall issue necessary orders sanctioning monthly pension to the applicant for his Government service and shall disburse the same every month thereafter.
>
> c) We direct the first respondent to arrange payment of arrears of monthly pension to the applicant for a period of one year counted backwards from the date of filing of this Original Application within a period of two months from the date of issue of sanction order as in (b) above."

According to the petitioner, he is entitled to get the entire arrears of pension from 1994. Feeling aggrieved by the direction to pay arrears only for one year, the petitioner attempted a review petition. That was dismissed by Ext.P2. Thereafter, this writ petition is filed challenging Ext.P1 to the extent mentioned above, as also Ext.P2. According to the petitioner, the failure to order payment of the entire arrears is illegal and improper. The finding of the Tribunal that claim beyond one year from the date of institution of the O.A. is barred by limitation, is unsustainable, it is submitted. The

petitioner was directed to pay the pro rata pensionary benefits for the service rendered by him under the first respondent. No concession was granted to him in the matter. So, the omission to pay the entire arrears is unjustified.

2. We heard learned counsel for the respondents also. We notice that arrears of pension for a period of one year from the date of institution of the O.A. has been granted. We further notice that in Section 21 of the Central Administrative Tribunals Act there is a limitation in filing the application. Normally it should be filed within one year from the date of arising of cause of action. But in this case, the denial of full pension is a continuing cause of action. Therefore, the petitioner could file the OA at any point of time. But the claim for arrears cannot be extended beyond one year from the date of filing of the application. Going by the scheme of Section 21, we feel that the view taken by the Tribunal regarding arrears, is certainly a plausible view. Viewed from another angle, it can be said that it is a matter within the discretion of the Tribunal. We feel that the Tribunal has exercised the discretion rightly. At any rate, it cannot be called a perverse exercise of discretion. Therefore, the denial of arrears beyond one year from the date of institution of the O.A., cannot be interfered with in a writ petition under Article 226/227 of the Constitution of India.

Accordingly, the writ petition fails and the same is dismissed. The claim of the petitioner regarding full gratuity, is not a point raised or decided in the O.A. Therefore, the said claim is kept open.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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